Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Connect America Fund	)	WC Docket No. 10-90
Establishing Just and Reasonable Rates for Local Exchange Carriers	)	WC Docket No. 07-135
Developing an Unified Intercarrier Compensation Regime	)	CC Docket No. 01-92

REPLY COMMENTS OF CONSOLIDATED COMMUNICATIONS COMPANIES, PEERLESS NETWORK, INC., AND WEST TELECOM SERVICES, LLC

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Pursuant to the Commission's June 29, 2017 Public Notice issued in the above-captioned proceedings,[1] Consolidated Communications Companies ("Consolidated"), Peerless Network, Inc. ("Peerless"), and West Telecom Services, LLC ("West Telecom") (collectively, the "Carrier Coalition") respectfully file these reply comments (a) in opposition to Ad Hoc Telecommunications Users Committee's ("Ad Hoc") request that the Commission "apply the per minute charges for terminating traffic to the originating or 'open' end of 8YY calls" (referred to

[1] *Parties Asked to Refresh the Record Regarding 8YY Access Charge Reform*, WC Docket Nos. 10-90 & 07-135, CC Docket No. 01-92, Public Notice, DA 17-631 (rel. Jun. 29, 2017) ("Notice").

herein as "Ad Hoc's Request")[2] and (b) in response to various other comments made concerning the treatment of 8YY traffic for access charge purposes.

SUMMARY

The record demonstrates that the Commission should deny Ad Hoc's Request, which – for many carriers – would result in a "flash-cut" to bill-and-keep for originating 8YY traffic, for the following four key reasons, among others. *First*, Ad Hoc's portrayal of the "historic" treatment of 8YY traffic is both incorrect and misleading. The rates for terminating end office switching, tandem-switched transport and tandem switching have never applied to the originating end of 8YY traffic. *Second*, adoption of Ad Hoc's Request would trigger an abrupt, drastic and inappropriate regime change for 8YY traffic, especially where terminating rates have already been or soon will be transitioned to bill-and-keep, that would be hugely disruptive and inconsistent with sound policy. ***Third,*** Ad Hoc's Request would perversely defeat the expectations of both carriers and customers with respect to 8YY service. *Fourth*, there is currently insufficient evidence to support a wholesale, industry-wide overhaul of charges for originating 8YY traffic.

The arguments of the few commenters supporting Ad Hoc's Request are unavailing, because they fail to describe or quantify any supposed benefit of a flash-cut regime change that that would somehow outweigh its harmful consequences. Rather, they largely portray regime change as a potential way to address alleged access stimulation schemes. Yet their allegations concern the actions of a *few carriers*, and thus – even if true – do not provide a valid basis for

[2] Notice at 1 (quoting and citing letter from Colleen Boothby, Counsel to Ad Hoc Telecommunications Users Committee, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 10-90 et al. at 1 (filed May 19, 2017)).

industry-wide, flash-cut regime change. Such issues can instead be addressed by the Commission's existing access stimulation rules and complaint procedures. If the Commission, however, were to adopt any regime change (which it shouldn't), the Commission should do so via a holistic approach with balanced rule transitions, including a multi-year phase in and revenue recovery mechanisms, along with coordinated industry and consumer reeducation efforts to explain that 8YY services are no longer free to the caller.

Finally, as for the additional piecemeal proposals offered, the record does not support subjecting 8YY database query charges to the CLEC benchmark rule or granting AT&T's pending forbearance petition as it relates to 8YY database query charges. If anything, the tariffing regime for 8YY database query charges, which AT&T seeks to dispense with, is necessary to ensure that carriers performing the services are justly compensated for handling traffic on behalf of the 8YY service provider and its subscribers.

I. Commenters Overwhelmingly Oppose Ad Hoc's Request to Apply the Bill-and-Keep Regime to Originating 8YY Traffic

The record demonstrates that most commenters oppose Ad Hoc's Request, which – for many carriers – would result in a "flash-cut" to bill-and-keep for originating 8YY traffic. The Commission should take particular attention to the key points made by various commenters in opposition Ad Hoc's Request that are discussed below.

First, Ad Hoc's portrayal of the "historic" treatment of 8YY traffic is both incorrect and misleading.[3] As Ad Hoc and others recognize, over twenty years ago, the Commission applied

[3] Comments of CenturyLink, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 7 (filed July 31, 2017) ("CenturyLink Comments"); Comments of Consolidated Communications Companies, Peerless Network, Inc. and West Telecom Services LLC in Opposition to Ad Hoc's Request Concerning the Treatment of 8YY Traffic for Access Charge Purposes, WC Docket

the terminating carrier common line ("CCL") rate to the originating end of 8YY calls;[4] however, as Carrier Coalition explained,[5] the Commission did so because during the period when the originating CCL rate was zero, 8YY calls with one open end incurred no CCL charge on the originating end, *such that "8[YY] service would have avoided CCL charges altogether.*"[6] To prevent this situation, the Commission held that the originating end of 8YY calls be treated as terminating minutes and be assessed the terminating CCL charge. But because the CCL is no longer assessed, the circumstances that prompted the historic regime do not exist today, such that Ad Hoc's Request has no basis in today's regulatory regime.

Moreover, with exception of once applying the terminating CCL rate for originating 8YY traffic, all other originating switched access rates, e.g., end office switching, tandem-switched transport, and tandem switching rates, *have always applied to the originating end of 8YY calls*.[7] Conversely, rates for terminating end office switching, tandem-switched transport and tandem switching have never applied to the originating end of 8YY traffic. So given the fact that there is

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Nos. 10-90, 07-135 & CC Docket No. 01-92, at 6-7 (filed July 31, 2017) ("Carrier Coalition Comments").

[4] Comments of AT&T, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 5-6 (filed July 31, 2017) ("AT&T Comments"); CenturyLink Comments at 7; Comments of General Communication, Inc. ("GCI") in Response to the Public Notice Asking Parties to Refresh the Record Regarding 8YY Access Charge Reform, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 3-4 (filed July 31, 2017) ("GCI Comments"); Carrier Coalition Comments at 6-7.

[5] Carrier Coalition Comments at 6-7.

[6] Carrier Coalition Comments at 7 (quoting *In the Matter of Long Distance/USA, Inc., et al., Complainants, v. The Bell Telephone Company of Pennsylvania, et al.*, Memorandum Opinion and Order, 7 FCC Rcd 408, ¶ 3 (1992)).

[7] Carrier Coalition Comments at 7.

no CCL rate, the notion of applying the "historic treatment" to existing switched access rates would in fact result in no regime change at all.[8]

Second, adoption of Ad Hoc's Request would trigger an abrupt, drastic and inappropriate regime change for originating 8YY traffic, especially where terminating rates have already been or soon will be transitioned to bill-and-keep, that would be hugely disruptive and inconsistent with sound policy. Parties universally recognize Ad Hoc effectively proposes that the Commission immediately apply the bill-and-keep rules, which currently apply to terminating traffic, to originating 8YY traffic.[9] But as ITTA explained, "transitioning 8YY access charges to bill and keep is not the solution."[10] CenturyLink likewise noted that the "historic treatment cannot be cited as a justification for now lowering the access charges imposed on originating 8YY traffic."[11] Rather, as indicated above, the "historic treatment actually *supports* a continuation of positive ICC compensation for originating 8YY access traffic as it reflected an intent to subject 8YY traffic to greater ICC compensation than non-8YY originating traffic – not less."[12]

Commenters make it abundantly clear that the magnitude of Ad Hoc's proposed immediate transition to bill-and-keep cannot be overstated, because 8YY traffic constitutes an enormous percentage of originating traffic, which corresponds to a significant percentage of

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[8] Carrier Coalition Comments at 7.

[9] See, e.g., Comments of Verizon, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 6 (filed July 31, 2017) ("Verizon Comments"); AT&T Comments at 4; Comments of ITTA – The Voice of America's Broadband Providers, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 3 (filed July 31, 2017) ("ITTA Comments"); Carrier Coalition Comments at 9.

[10] ITTA Comments at 6.

[11] CenturyLink Comments at 7 (emphasis in original).

[12] CenturyLink Comments at 7.

originating switched access revenues overall.[13] For instance, three ITTA members reported that for 2016, their total originating 8YY traffic ranged from slightly over 30 percent to slightly over 60 percent.[14] For a number of NRIC member companies, their total 2016 interstate and intrastate originating 8YY traffic was 35 percent of total originating switch access traffic, with originating interstate 8YY traffic being 57 percent of total interstate originating switch access traffic during 2016 and the first six (6) months of 2017.[15] As Consolidated previously reported, originating 8YY traffic accounts for 44 percent of its originating traffic and switched access revenues to its end users where it is an ILEC, prior to merging with FairPoint.[16] For GCI's affiliated LECs, the 8YY minutes of use are consistently greater than the non-8YY originating minutes – as much as three times the non-8YY minutes.[17]

These percentages demonstrate that Ad Hoc's proposed regime change would radically reduce originating access revenues without affording affected carriers a corresponding revenue offset or reasonable transition period. Thus, a flash-cut to bill-and-keep for originating 8YY traffic would be hugely disruptive for originating access providers and as IITA noted, could

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[13] AT&T states that CLEC 8YY originating minutes now account for more than 53 and 51 percent of all interstate and intrastate originating 8YY minutes, respectively, today. AT&T Comments at 8 & n.12. It further states that Non-RBOC ILECs (price cap and rate of return) today account for only 15 percent of the total originating 8YY minutes billed to AT&T. AT&T Comments at 8 n.13.

[14] ITTA Comments at 5. Notably, as compared to 2011, these members' originating 8YY access minutes decreased in 2016 by amounts ranging from slightly over 20 percent to slightly over half. *Id.*

[15] Comments of the Nebraska Rural Independent Companies in Response to June 29, 2017 Public Notice, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 4-5 (filed July 31, 2017) ("NRIC Comments").

[16] Carrier Coalition Comments at 2.

[17] GCI Comments at 9.

prompt "financial distress."[18] In similar circumstances, the Commission has repeatedly rejected calls for flash-cut regime change to "avoid market disruption to service providers and consumers."[19]

Third, Ad Hoc's Request would perversely defeat the expectations of both carriers and customers with respect to 8YY service.[20] As Inteliquent aptly explained, "[a] bill-and-keep approach applied to 8YY origination defeats the very purpose of a toll free call, which is to alleviate the calling party from paying for the call, and to shift those fees to the toll-free customer, the called party."[21] Similarly, ITTA explained that, "when a consumer places an 8YY call, she expects that call [will be] toll-free"; however, "[e]mbedding charges attributable to 'toll-free' calling within the rates consumers pay LECs for telephone service would fundamentally contravene that expectation."[22]

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[18] ITTA Comments at 6.

[19] *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208 , Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 996 (2011) ("*USF/ICC Transformation Order*"), *aff'd sub. nom. In re: FCC 11-161*, 753 F.3d 1015 (10th Cir. 2014), *cert. denied*, 135 S. Ct. 2072 (2015).

[20] Carrier Coalition Comments at 10-11. As the Carrier Coalition explained, "the existing regime ensures that carriers performing originating switched access, including tandem switching and transport services, are compensated for handling and processing 8YY traffic and that the caller is not charged for these services, either directly or indirectly, for placing a call to an 8YY number." *Id.* at 10.

[21] Comments of Inteliquent, Inc., WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 2 (filed July 31, 2017) ("Inteliquent Comments").

[22] ITTA Comments at 3.

The Rural LECs insightfully point out that Ad Hoc's "sleight of hand [request] would have the perverse result of shifting to the originating customer (or its LEC provider) the entire tab for the 'toll-free' service the 8YY provider and its own customer (*e.g.*, a bank call center or retail store) are purportedly offering."[23] They explain that "LECs originating calls should not be forced to provide these services to the 8YY provider without compensation, nor should the end-user customer be told he or she is making a toll-free call but then get stuck with the bill."[24] They further note that such a result "would constitute an un-Constitutional taking, depriving LECs of just compensation for the service provided and call into question the entire premise of toll-free calling as a 'free' service to consumers."[25]

Given the above, consumers and customers of the 8YY traffic would need to be reeducated on charges assessed for 8YY traffic before Ad Hoc's proposed regime change could be implemented. As the Carrier Coalition noted, a massive reeducation of consumers placing 8YY calls would need to be undertaken so that they know such calls are no longer truly free before such charges could be assessed to them.[26] Companies that subscribe to 8YY services would likewise need to be reeducated that the calls are no longer truly free for those that call 8YY numbers and that such callers may be assessed access charge fees associated with handling and processing of 8YY calls.[27] Absent such reeducation, if charges associated with the provision

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[23] Comments of Windstream Services, LLC, Frontier Communications Corporation, and NTCA – The Rural Broadband Association, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 10 (filed July 31, 2017) ("Rural LECs Comments").

[24] Rural LECs Comments at 11.

[25] *Id.*

[26] Carrier Coalition Comments at 11 n.32.

[27] *Id.*

of switched access service for 8YY calls appeared on the telephone bill of an end-user that called an 8YY number—who of course had the understanding he or she would not be charged for the 8YY call-—the billing carrier (and provider of switched access services) could be exposed to Section 201(b) violations when assessing such charges where such charges may be perceived by consumers as "unauthorized" and perhaps deceitful. [28]

Further, as NRIC astutely observed, "Ad Hoc fails to justify why bill-and-keep applied in an 8YY environment is justified when the IXC serving the 8YY user (or possibly, in the case of the Ad Hoc, one of its members) is the only entity with a 'retail' relationship with the customer ordering the 8YY service based on how 8YY service is provisioned."[29] Nor does the carrier providing access to the 8YY service provider "have any 'end user' relationship with the entity receiving the call and thus no opportunity to recover the cost of originating the 8YY call from that 8YY customer."[30] As a result, absent a specific resolution of the cost recovery issues arising from the method of provisioning 8YY service, the IXC "offering the facilities-based 8YY service (and thus the customer of that service) would receive a 'free ride' over the switched access network of the originating RLEC."[31]

Fourth, as the Rural LECs wisely observed, "there is currently insufficient evidence to support a wholesale, industry-wide overhaul of charges for originating 8YY traffic, especially considering that such charges reflect the actual costs that LECs incur for 8YY database dips and to maintain the local networks that 8YY providers like AT&T are accessing to serve their

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[28] Carrier Coalition Comments at 11 n.32.

[29] NRIC Comments at 5-6.

[30] *Id.* at 6.

[31] *Id.*

customers."[32] In this connection, the Rural LECs urge the Commission to collect and analyze relevant data before proposing or adopting originating access reforms and suggest that the Commission do the following:

> (a) Evaluate whether and to what degree consumers actually benefitted from prior access charge reductions in the form of lower long distance and wireless rates;
>
> (b) Analyze if and to what extent ICC savings have actually been passed through to providers in the form of lower wholesale rates, and to consumers in the form of lower prices and better service; and
>
> (c) Collect and analyze relevant data regarding current minutes, revenues, and rates.[33]

The Carrier Coalition agrees with the Rural LECs' assessment.[34]

For the foregoing reasons, among others, the Commission should deny Ad Hoc's Request.

II. Arguments in Support of a Flash-Cut Change to the Bill-and-Keep Regime for Originating 8YY Traffic Are Unavailing

As discussed above and at length in the Carrier Coalition's initial comments, the Commission must reject Ad Hoc's Request and other demands for flash-cut change to the bill-and-keep regime for 8YY traffic. The few commenters supporting Ad Hoc's Request fail to describe or quantify any supposed benefit of a flash-cut regime change that that would somehow

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[32] Rural LECs Comments at 3.

[33] *Id.* at 6-7.

[34] Even USTelecom urges the Commission to collect more data. *See* Comments of USTelecom Association, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 2 (filed July 31, 2017)(explaining that "[w]ith regard to broader 8YY reforms or reforms of originating access generally, the Commission lacks sufficient data to achieve its goal of executing 'well-informed, economically sound policy' and that the Commission "should evaluate whether and how consumers have been affected by reforms effectuated in 2011, analyze the effect of changes in technology such as the migration to IP networks, and collect data on originating access revenues and minutes, which are necessary to evaluate possible appropriate transitions.").

outweigh its harmful consequences. Notably, these commenters do not attempt to dispute how significantly originating access providers would be harmed by the proposed regime change; instead, they largely portray regime change as a potential way to address alleged access stimulation schemes.[35]

These allegations, however, concern the actions of a *few carriers*, and thus – even if true – do not provide a valid basis for *industry-wide*, flash-cut change to the bill-and-keep regime for originating 8YY traffic.[36] Indeed, the Commission previously recognized that its rules addressing access stimulation should be "***narrowly tailored*** to…avoid[] burdens on entities not engaging in access stimulation."[37] Ironically, the carriers supporting transition to a bill-and-keep regime for originating 8YY traffic, i.e., AT&T, Sprint and Verizon, are IXCs that offer 800 services to end users and while pointing to access stimulation to justify a regime change, self-servingly and obviously look to arbitrage and profiteer from such a regime so that they can be the "free riders" discussed in Section I, above. Thus, their support for a regime change has no credibility whatsoever.[38] That said, any further Commission action to address access stimulation should be

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[35] *See, e.g.*, AT&T Comments at 4-7 & 13-14; Verizon Comments at 2-5; Comments of Sprint Corporation, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 2 (filed July 31, 2017).

[36] In a recent ex parte filing, AT&T identified 17 out of 1,300 carriers—just over 1% of all carriers—as allegedly engaged in or supportive of traffic pumping. Letter from Matthew Nodine, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-363, at page 10 of attached slide deck (filed May 11, 2017).

[37] *USF/ICC Transformation Order*, ¶ 33 (emphasis added).

[38] Moreover, AT&T has no room to claim a bill-and-keep regime change is needed for originating 8YY traffic based on the alleged conduct of a few carriers when the record in the forbearance proceeding makes clear that AT&T engages in unlawful self-help by not paying tariffed 8YY database dip and tandem switching rates, but rather the rates it so chooses to pay. *See* Letter from Robert H. Jackson, Counsel for Teliax, Inc., to Marlene H. Dortch, Secretary, FCC, WC Docket No. 16-363 (filed June 8, 2017) (explaining that "AT&T does not actually pay either Teliax's tariff DBQ rate (or originating end office rates), but rather it pays AT&T created

made on a targeted basis, either through enforcement of the Commission's existing rules or additional targeted measures.

Indeed, access stimulation schemes are already addressed by the Commission's access stimulation rules.[39] For example, those rules provide that, when a CLEC is engaged in access stimulation – as defined in the Commission's rules – the carrier "must reduce its interstate switched access tariffed rates to the rates of the price cap LEC in the state with the lowest rates[.]"[40] Thus, to the extent individual carriers are engaged in access stimulation, the Commission's rules already provide a basis for such conduct to be challenged and remedied. Significantly, however, the commenters complaining of alleged access stimulation never explain why the Commission's existing rules are insufficient to address the alleged conduct, presumably because they would rather exploit the entire industry on a nationwide basis, under a bill–and-keep regime, which would allow them to free ride on the services of other carriers when providing 8YY services.[41]

Moreover, even if additional measures were necessary to address access stimulation or other arbitrage schemes, there exist a number of available vehicles to do so short of industry-wide, flash-cut regime change.[42] For example, Section 208 complaints may be filed against

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national average DBQ and tandem switching rates."). The Carrier Coalition notes that AT&T has taken such abusive self-help actions - I'll pay what I want, if anything, regardless of the rate in your tariff - approach with other carriers.

[39] *See, e.g.*, 47 C.F.R. §§ 61.3(bbb), 61.26(g), 61.39(g), & 69.3(e)(12).

[40] *USF/ICC Transformation Order*, ¶ 657; 47 C.F.R. § 61.26(g).

[41] *See, e.g.*, AT&T Comments at 4-7.

[42] NRIC Comments at 2 (explaining that "[n]o demonstration has been made that any such *interstate* 8YY arbitrage (if it occurs) cannot be resolved via alternative Commission procedures

individual carriers for violation of the Commission's access stimulation rules or the Communications Act in general.[43] Such complaint proceedings allow the Commission to examine the conduct of the few carriers engaged in the alleged access stimulation schemes without impacting those that are not. Additionally, the Commission may also adopt rules specifically targeted to address any remaining access stimulation schemes. For instance, issues associated with robocalling that Verizon raises[44] – including potential rules to permit call blocking for certain robocalls – may be addressed in the Commission's ongoing and active robocalling proceeding[45] or by filing a report with the Federal Bureau of Investigation's Internet Crime Complaint Center.[46]

Consistent with the Commission's stated policy of ensuring that major intercarrier compensation reforms are achieved through a "holistic" approach,[47] targeted measures – such as those discussed above – should be used to address arbitrage while major reforms are made through balanced rule transitions. As others have proposed, such transition periods must include a multi-year phase in[48] and revenue recovery mechanisms,[49] to ensure that carriers are given an

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- such as complaints or rulemakings - in an effort to address whatever AT&T claims to be *interstate* 8YY arbitrage issues.") (emphasis in original).

[43] 47 U.S.C. § 208.

[44] *See* Verizon Comments at 4 (claiming that Verizon has observed a scheme in which "a caller using an autodialer will make robocalls to 8YY numbers).

[45] *See, e.g., In the Matter of Advanced Methods to Target and Eliminate Unlawful Robocalls*, CG Docket No. 17-59, 32 FCC Rcd 2306, Notice of Proposed Rulemaking and Notice of Inquiry, ¶ 1 (2017) (beginning "a process to facilitate voice service providers' blocking of illegal robocalls").

[46] *See* http://voipsecurityblog.typepad.com/files/toll-free-traffic-pumping_11-7-13-.pdf.

[47] *USF/ICC Transformation Order*, ¶ 13.

[48] Comments of Comcast Corporation, WC Docket Nos. 10-90, 07-135 & CC Docket No. 01-92, at 4 (filed July 31, 2017).

adequate period within which to adapt to changing regimes and afford carriers a revenue offset prompted by any transition to bill-and-keep.[50] Moreover, since a regime change for 8YY traffic will also entail changing consumer expectations, as discussed above, a transition period is also necessary to allow time for consumer reeducation to take place. Calls for flash-cut, industry-wide regime change to address alleged arbitrage of a few carriers should therefore be rejected.

III. The Commission Should Reject Additional Proposals Seeking Piecemeal Intercarrier Compensation Reforms

Some commenters make additional proposals for piecemeal changes to the existing intercarrier compensation regime for 8YY traffic. While such proposals are at best tangential to Ad Hoc's Request, which was the core question posed by the Commission's Notice, these requests are both unsupported by the record and inconsistent with the Commission's stated policy to address intercarrier compensation reforms through a holistic approach – *i.e.*, one that takes account of the circumstances of all industry stakeholders. The Carrier Coalition responds to certain of these requests below.

First, contrary to Inteliquent's and Centurylink's request, the record does not support subjecting 8YY database query charges to the CLEC benchmark rule.[51] While two commenters

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[49] CenturyLink Comments at 6; NRIC Comments at 3 & 6.

[50] CenturyLink Comments at 6 & n.11; ITTA Comments at 1 & 6; NRIC Comments at 3, 6 & 9.

[51] Inteliquent Comments at 1, & 3-5. CenturyLink Comments at 6. Contrary to CenturyLink's claims (CenturyLink Comments at n.10), 8YY database dip charges are not subject to the CLEC benchmark. *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers; et al.*, CC Docket No. 96-262, CCB/CPD File No. 01-19, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd 9108, n.251 (2004) ("reject[ing] AT&T's request that [the Commission] limit 8YY database query charges based on the incumbent LEC charges."). *Access Charge Reform; Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Seventh Report and Order and

make reference to such a request[52] neither provides detailed evidence or analysis as to why such measures would be necessary (such as, for example, a study of the overall level of 8YY database query rates).[53] Thus, it is impossible to conclude whether 8YY database query charges present a true concern, not to mention what the scope of the alleged problem actually is.[54] For example, if the alleged concerns relate to a limited number of carriers, then such issues are more appropriately addressed through targeted complaint proceedings. The limited, bare allegations contained in the record, however, do not provide a valid basis for industry-wide rulemaking.

Second, the Commission should reject AT&T's request that the Commission grant its pending forbearance petition as it relates to 8YY database query charges.[55] As noted, that petition – which merely cites to the tariffed rates of four LECs[56] – fails to meet the evidentiary and analytical requirements for a grant of forbearance, as it provides no analysis whatsoever that would permit the Commission to conclude whether the alleged problem requires market-wide forbearance. Moreover, the tariffing regime that allows 8YY database query charges to be

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Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923, n.128 (2001) ("declin[ing]…to impose by rule the limit on database query charges").

[52] Inteliquent Comments at 1, & 3-5. CenturyLink Comments at 6.

[53] Inteliquent Comments, at 3; CenturyLink Comments at 5-6. Even the pending forbearance petition of AT&T, which seeks detariffing of 8YY database query charges, fails to identify the scope of the alleged problem. Indeed, the AT&T Forbearance Petition merely cites to the tariffed rates of four CLECs. *See* Petition of AT&T Services, Inc. for Forbearance Under 47 U.S.C. §160(c) from Enforcement of Certain Rules for Switched Access Services and Toll Free Database Dip Charges, WC Docket No. 16-363, at 19 n.29 (filed Sept. 30, 2016) ("AT&T Forbearance Petition")).

[54] Similarly, nor does the record support adoption of CenturyLink's "defined historical average cap" rate for 8YY database query charges or AT&T's request that the such charges be transitioned to bill-and-keep. *See* CenturyLink Comments at 5; AT&T Comments at 8.

[55] AT&T Comments at 8-12 (discussing AT&T Forbearance Petition).

[56] AT&T Forbearance Petition at 19 n.29.

assessed is necessary to ensure that carriers performing the services are justly compensated for handling traffic on behalf of the 8YY service provider and its subscribers.

Notably in the proceeding addressing the AT&T Forbearance Petition, various carriers opposed AT&T's request to detariff the 800 database query rate because it was transparent that AT&T wanted free 800 database queries, which AT&T deceivingly did not admit.[57] However, AT&T has certainly validated that legitimate concern and made that admission by boldly asking to get these services for free pursuant to bill-and-keep in this proceeding. But these charges should not be subject to bill-and-keep for the reasons discussed herein as it is these charges – which the 8YY customer has explicitly agreed to pay for – that allow such calls to be placed on a "toll-free" basis.

At bottom, AT&T's forbearance request is merely its attempt to avoid paying the charges to other carriers that AT&T's own end-users want to pay for. Because the end result of the relief AT&T seeks, via application of bill-and-keep or detariffing to database query charges, does not seek to protect consumers, but is rather an attempt by AT&T to profiteer and be a free-rider through regulatory fiat and arbitrage, AT&T's requested relief is inappropriate and must be denied.

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[57] *See, e.g.*, Consolidated Communications Companies and West Telecom Services, LLC's Motion for Summary Denial of and Opposition to AT&T's Petition, WC Docket No. 16-363, at 6, 34, 36-38 (filed Dec. 2, 2016); Motion for Summary Denial of and Opposition to AT&T's Petition of Birch Communications, Inc.; BTC, Inc.; Cbeyond Communications, LLC; Goldfield Access Network, LC; Kansas Fiber Network, LLC; Louisa Communications; Nex-Tech, Inc.; and Peninsula Fiber Network, LLC, WC Docket No. 16-363, at 31-33 (filed Dec. 2, 2016).

CONCLUSION

For the foregoing reasons, the Commission should deny Ad Hoc's Request and otherwise rule, as requested herein, on the various other issues discussed.

Respectfully submitted,

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